

Legal and Regulatory Subgroup—Meeting Two DRAFT Minutes

September 14, 2020

11:00 AM

Virtual Meeting

A meeting video link will be shared soon

Meeting Attendees:

Deputy Secretary Brad Copenhaver, on behalf of Secretary Bettina Ring
Deputy Secretary Jae K. Davenport, on behalf of Secretary Brian Moran
Assistant Secretary Catie Finley, on behalf of Secretary Daniel Carey
Charles Green, on behalf of Commissioner Jewel Bronaugh (VDACS)
Nate Green (Virginia Association of Commonwealth's Attorneys)
Kristen Howard (State Crime Commission)
Holli Wood (OAG), on behalf of Mark Herring
Ngiste Abebe (Columbia Care)
Caroline Juran (Board of Pharmacy)
Michael Carter (VSU Small Farm Outreach Program and farmer)
Colby Ferguson (DMV), on behalf of Commissioner Richard Holcomb
Linda Jackson (Department of Forensic Science)
Richard Boyd (Virginia State Police)
Dr. Sam Caughron (Charlottesville Wellness Center Family Practice)
Jenn Michelle Pedini (Virginia NORML)
John Daniel, on behalf of Travis Hill (ABC)

Jenn Michelle Pedini called the meeting to order at 11:15 PM.

Approval of August 19, 2020 Minutes

- Jenn Michelle Pedini called for a vote to approve the minutes of the subgroup's last meeting on August 17, 2020.

Roll Call Vote: 12 yes, 0 no

- Unanimous in favor of approval of minutes

Guest Speaker Sheba Williams, NoLef Turns

Sheba spoke mainly to the expungement of cannabis and marijuana related charges. The current bill that is being considered by the General Assembly does not start until 2024 and requires a long waiting period. The most important things are to decrease criminalization of recordation of use and having a more time-sensitive expungement process. Currently a bill in the General Assembly stipulates that 18-21 year olds who receive marijuana offenses pay a \$150 fine that goes to the Virginia State Police. She suggested a 3-5 year waiting period and keeping cannabis related offenses in juvenile and domestic courts so the record is sealed as a juvenile record at the age of 21. She also recommends reducing this to \$25 like our current decriminalization fine.

She also focused on reentry issues. Many barriers to reentry exist, such as credit, housing, employment—also access to capital when starting a business. Reducing the cost and the time for

expungement of records is key. She also recommended additional funding for supporting various education and other programs.

Ngiste Abebe: Appreciate you bringing up the point around how background checks can impact folks' ability to have future economic opportunity—especially licensing with DPOR. How does this work, and which trades that DPOR licenses are particularly affected?

Sheba Williams: DPOR has a 20 year lookback period. Even though DOC has certain trade education opportunities, DPOR will let someone get partway through the licensing process, and then notify them that they need to do additional background checking. This process can be traumatizing because it involves two attorneys and a court reporter, and this can take many months to make a final decision. So this is important because if DPOR is looking back 20 years, just having an 8 year expungement period could be a problem. Trades most impacted are entrepreneurship related—it is mostly people of color who are incarcerated, so they are the ones who are denied opportunities for licensing.

Jenn Michelle Pedini: Would like to hear a little more about the urgency of expunging marijuana possession related offenses immediately when we are talking about legalization.

Sheba Williams: Currently we are looking at a process that won't start until 2024 and can be costly. Also, courts are still using very outdated software. This is urgent because people who probably never should have been impacted by this criminalization are being negatively impacted. We are leaving many people out of the conversation if we wait.

Nathan Green: Are you saying that there are licenses from DPOR where a marijuana conviction would preclude you from getting a license?

Sheba Williams: They have denied licenses for real estate, security, and other things that fall under criminal justice services.

Michael Carter: Is DPOR required to explain why they deny the license?

Sheba Williams: It is really up to the discretion of the interviewee, but if you sit in a panel hearing, they will typically tell you the reason.

Michael Carter: Can you challenge or reapply?

Sheba Williams: You can appeal it, but that does not guarantee that it will be approved upon appeal.

Michael Carter: Is there any data on those who have been denied and recidivism?

Sheba Williams: Not sure if that data exists, but overall, Virginia has the lowest recidivism rate in the nation for the first three years after release—23.4%.

Ngiste Abebe: When you talk about the opportunity from a legal marijuana industry, remember all of the ancillary services and industries as well. Also, any thoughts about how to educate people about their rights and the expungement process as a part of this discussion?

Sheba Williams: There are many private background check companies, and they are not required by law to update their records except once a year. This could be harmful to people, and private background check companies need to be more closely regulated.

Nathan Green: Rather than changing the expungement law, would it be easier to go the route of saying that someone could not be denied a licensure because of a past possession conviction?

Sheba Williams: That could be easier, but the most effective route would be to destroy the record rather than sealing. The current expungement process is very complicated and costly.

Ngiste Abebe: Given the timeline for this, it will likely be necessary to have a regulatory intervention, but we still need to deal with the issues around background checks.

Caroline Juran: Pointed out that for DHP, and she guesses for DPOR as well, that this would need to be a code change and not just regulatory.

Vickie Williams, Decriminalize Virginia

Vickie is a longtime advocate for legalizing adult use of cannabis—emphasis on adult. She has worked for 10-15 years on restoration of rights, and has seen how this criminalization has really negatively impacted lives. Once you have been in the criminal justice system, you often do not have the same job opportunities as others, so you need to be more entrepreneurial. But we are creating many barriers for people to be participants. Once someone completes everything they need to, that record should disappear. The Governor can impact this in an administrative manner, as he can in restoration of rights, but we need to have it in the law as well.

We need to be mindful that African-Americans have been most disproportionately impacted by the criminalization of marijuana. We have made progress but need to do more. Need to legalize safely and smartly. And the money we make in taxes can support outreach to our communities, and this needs to be targeted and with partnerships with groups who can do effective outreach.

She is also a strong proponent of expungement and doing expungement now.

Question from someone in the chat to Vickie: What about right to remedy and reparations for victims of disproportionate violations of fundamental rights by the criminal justice system?

Vickie Williams: African-Americans are 3-1 disproportionately affected by arrests and convictions, even though they have the same smoking rates as white people. We need to put some equity into this—not just a buzz word. Often, people of color may be at the table, but they do not have any power. It needs to be reachable to people of color. One example is the medical program in Virginia where it was out of reach for many people of color financially to get into the industry.

Jenn Michelle Pedini: Can you share some insights learned from restoration of rights when it comes to educating people about expungement of cannabis records?

Vickie Williams: You need to actually look at where in the community you can have those conversations—partner with groups who are already in the trenches. Work with HBCUs and black Greek organizations, other organizations in the community, and churches as well. Meet us where we are, not where you think we should be.

Brad Copenhaver: Can you talk about other barriers to entry into the industry for disadvantaged communities and how we many address those?

Sheba Williams: Buying into a start-up can be a very high cost for black families, and even if you have the right background, there is a history of black people being denied access to capital for business ventures.

Ngiste Abebe: There are lots of different solutions, such as creating a “social equity” application status and removing requirements to have identified real estate and be paying rent when applying. Washington State has done a good job of working with credit unions and state chartered banks to get lines of credit, and public private partnerships could be good tools too. We also need to make sure that a “social equity” licensing process cannot be exploited by bad actors—protect folks from financial predation.

Nathan Green: One of the explanations for traffic fatalities going up in Colorado but not in Washington could be the density of licenses in the population. Has anyone studied this, and is there a benefit to knowing exactly where the licenses would be?

Ngiste Abebe: Different states have different rules about how far a dispensary can be from another one. The Illinois program gave licenses by geographic area and has regular analysis to see if they are meeting their social equity goals. We need to also consider localities being able to opt in or opt out for localities and for business to be sure that they are going into a community where they would be welcome.

Sam Caughron: Do we want to propose changing the expungement law? Is that part of our mandate?

Jenn Michelle Pedini: After speaking recently with House leadership, she knows they are interested in what our recommendations are.

Vickie Williams: Got disconnected after Brad’s question. People of color already have issues getting access to capital in a normal business arena. So there will need to be some funding to go toward this—grants or loans. Also keep in mind that some prior convictions are not just marijuana, but could be a combination of marijuana and others. And how we can educate folks about what they actually can do when it comes to getting into the cannabis industry.

Michael Carter: This is all part of the foundation for equity moving forward. If you look at what some of the other states have gained from revenues, we have a good opportunity to raise a lot—is

there a way to use some financing to allow people to get into the business? If we do not deal with this, we cannot have an equitable marijuana legalization. How can we educate people on how criminalization has negatively impacted certain communities over the last 90 years? Is there any evidence that people who have been prescribed opioids and then abused them and been convicted are not able to get access again?

Vickie Williams: There are likely to be some challenges to getting access to them again once you are convicted.

Sheba Williams: Yes, you are restricted. But historically, the alternative to this has been medical cannabis.

Sam Caughron: They may be restricted, but they can still get them in an appropriate situation.

Jenn Michelle Pedini: Can Caroline Juran speak to what the patient disapproval rate for the medical program has been for those who have disclosed prior convictions?

Caroline Juran: It has been zero or close to zero—we feel it is for a medical purpose and has been prescribed by a provider.

Group Discussion

Brad Copenhaver: We are almost to the halfway point in our work plan, and it seems like the scope of legal and regulatory issues is very broad. How are we feeling about our list of topics, and what else do we need to discuss?

Nathan Green: There is a lot of conflicting information out there, but there is data that shows different amounts of traffic fatalities in different states have legalized. We need to explore that more. How have other states handled the driving-while-intoxicated issue?

Jenn Michelle Pedini: Would be good to hear from JLARC—specific provision in their study. There are some additional speakers we could hear from as well. If Virginia is interested in having that data, we would need to start aggregating that data before we legalize.

Brad Copenhaver: Staff will follow up on that with JLARC and DMV.

Ngiste Abebe: We also need to track what kind of data we have—distinction between residual cannabinoids and someone who was actually intoxicated at the time of an accident. It would still be good to hear from Toi Hutchinson from Illinois and Amber Littlejohn from the Minority Cannabis Business Association. The discussion of how this industry is going to be set up relatively quickly is still important to discuss.

Caroline Juran: How will the findings of this group be married up with the other group discussing the medical marijuana work group?

Brad Copenhaver: We do not have a formal process in mind yet, but keep in mind that the groups share some membership and are being managed from the Governor's office.

Catie Finley: This is a work group driven process, but there are specific things that the legislature has directed the group to do. But there is a recognition from the Governor's office that we need to be thinking about a potential transition from the medical program to a broader adult use program.

Linda Jackson: It would be helpful to hear from a state that has everything housed under one body.

Brad Copenhaver: Mr. Hoffman talked a lot about this from the Massachusetts perspective on Friday. In Virginia, we have a lot of silos that we have built, so we need to be thoughtful about how to set this up.

Caroline Juran: We have not talked about the hemp program yet, and it is part of this discussion as well? Should one entity oversee all three of these?

Brad Copenhaver: In both Massachusetts and Washington, the hemp programs are not under the single cannabis agency. This is something we need to think about.

Charles Green: We cannot think of an example of a state that includes hemp like that.

Michael Carter: It would be good to have someone from Illinois because they have been held up as a model.

Brad Copenhaver: We invited Toi Hutchinson, and she will hopefully be able to join us at some point.

Jenn Michelle: It would be helpful to hear from JLARC, so we do not duplicate work.

Brad Copenhaver: That would be a good concrete next step.

Nathan Green: When is their report due?

Brad Copenhaver: It will be at their mid-November meeting.

Richard Boyd: We were talking about driving under the influence, and recently, one of our local prosecutors had a case of driving under the influence of marijuana that involved the death of a child. Also, the State Police hold the criminal files for the state, so any thing that we may suggest to change that will have a financial impact.

Public Comment:

- Michelle Peace: She is a VCU researcher. She emphasized the importance of tamper evidenced packaging. Also the Board of Pharmacy needs to evaluate the list of solvents they are requiring testing for. She also mentioned the importance of a safe

banking program and the ability to test products where consumers have an adverse reaction.

- Lennice Werth: She raised concerns about the cost of entry into the business. Our alcohol regulation model provides us a good starting place—for example allowing homebrews. We need to allow home growing of cannabis.
- Mary Lynn Mathre: She is an RN, and she reiterated the importance of allowing home growing. The issue of expungement is also very important, and we need to clear those records as soon as possible. Testing and labeling is important.
- Robbie Berkely: He agreed with all previous speakers. Encouraged the state to allow flower sales. Also encouraged the use of Appellations of Origins and to require stores to keep them on hand in addition to hybrid varieties.
- Thomas Malone: He runs Arena Group Consulting and has a 1,000 acre hemp farm. He talked about the difference between how hemp and marijuana are grown and how they need to be regulated, but they are still all cannabis sativa and go through roughly the same extraction process. He could see some merit in combining the two industries.
- Regina Whitset: Executive Director of SAFE, a substance abuse coalition. She encouraged funding for prevention efforts. She also talked about the importance of allowing counties or cities to “opt out” of having cannabis in the community. She encouraged the group to have Dr. Kevin Sabet from Smart Approaches to Marijuana speak in the future.

The meeting was adjourned at 1:05 PM.